

REMARKS

The present amendment is responsive to the Office Action dated November 10, 2009. Claims 1, 9 and 20 have been amended and the title has been changed. No new matter has been introduced by the amendments. Claim 31 has been cancelled. Thus, claims 1-30 are again presented for consideration in view of the following remarks. The objection and rejections are addressed in view of the claims as presented herein.

Applicant would like to thank the examiner for his discussion with the undersigned attorney on January 26, 2009. The discussion involved the objection to the specification from page 2 of the Office Action and the § 112 rejection of claim 31 as set forth on page 3 of the Office Action. As indicated above, claim 31 has been cancelled, thereby mooting the rejection.

With regard to the objection to the specification, the Office Action asserted that the "specification on page 9, lines 3-4 states that the present invention is a computer program. This is directed to non-statutory subject matter since it is not a process, machine, manufacture nor composition of matter. Correction is required." (Office Action, numbered section 2, p.2.) Applicant respectfully disagrees. The cited portion of the application states:

Further, a second aspect of the present invention is a computer program described in a computer-readable format to execute on a computer system a wireless communication process in a wireless network constructed with a plurality of communication apparatus, characterized by comprising:
(Specification as filed, p.9, 11.3-7, emphasis added.)

Applicant submits that there is nothing improper in this statement regarding an aspect of the invention. The Office Action does not cite to any portion of the patent statutes, rules or guidelines of the Manual of Patent Examining Procedure ("MPEP")

that would support the present objection. Furthermore, the invention as presently claimed is not directed to a computer program *per se*. In view of this, applicant requests that the objection be withdrawn.

Claims 1-31 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 7,133,387 ("*Nakada*") in view of U.S. Patent Publication No. 2001/0046266 ("*Rakib*") and further in view of U.S. Patent Publication No. 2003/0112776 ("*Brown*"). Claims 1, 9 and 20 are independent. Applicant respectfully traverses the rejection.

Claim 1 has been amended to recite, in part, "a communication apparatus located within the communication area of the transmission source communication apparatus and not currently communicating for recognizing that the transmission path is used for a predetermined interval by another communication apparatus from a time when the preamble signal is detected."

Claim 9 has been amended to recite, in part, "whereby a communication apparatus located within the communication area of the wireless communication apparatus transmitting the packet and not currently communicating recognizes that the transmission path is used for a predetermined interval by another communication apparatus from a time when the preamble signal is detected."

And claim 20 has been amended to recite, in part, "whereby a communication apparatus located within the communication area of the communication apparatus transmitting the packet and not currently communicating recognizes that the transmission path is used for a predetermined interval by another communication apparatus from a time when the preamble signal is detected."

Support for these amendments may be found, by way of example only, specification page 13 at lines 12-28. This portion of the specification is reproduced below.

As this time, the communication apparatus #4, a hidden terminal viewed from the communication apparatus #2, detects the use of the transmission path using the beacon signal to execute a control without transmission until the termination of this communication. More specifically, the communication apparatus #4 detects that another communication apparatus #2 is specified as the prioritized transmission source on the basis of the beacon signal from the communication apparatus #3 to recognize that the transmission path is used up to the detection of the ACK packet for the transmission data from the communication apparatus #2.

Further, the communication apparatus # 1 is a hidden terminal viewed from the communication apparatus #3 and thus, cannot receive the beacon signal, but can similarly detect the use of the transmission path on the basis of the preamble signal added to the top of the data packet according to the data transmission by the communication apparatus #2 to execute a control of non-transmission until the termination of this communication.

Applicant submits that *Nakada* fails to disclose or otherwise suggest the features as claimed. In addition, applicant submits that neither *Rakib* nor *Brown* disclose or suggest such features. Thus, the applied combination as set forth in the rejection fails to set forth a *prima facie* case for obviousness. Therefore, applicant respectfully requests that the rejection of independent claims 1, 9 and 20 be withdrawn.

Furthermore, claims 2-8, 10-19 and 21-30 depend from independent claims 1, 9 and 20, respectively, and contain all the limitations thereof. For at least this reason, applicant submits that the subject dependent claims are likewise in condition for allowance.

As it is believed that all of the rejections set forth in the Office Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have. If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: February 5, 2010

Respectfully submitted,
Electronic signature:
/Andrew T. Zidel/
Andrew T. Zidel
Registration No.: 45,256
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicant

1114629_1.DOC